

LOUISIANA STATE SENATE

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Senator Conrad Appel

Senator Norby Chabert

Senator Page Cortez

Senator A. G. Crowe

Senator John R. Smith

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Senator Mack "Bodi" White, Jr.



Commerce, Consumer Protection and International Affairs

P. O. Box 94183

Baton Rouge, Louisiana 70804

Telephone (225) 342-2366

Committee Staff

Stacy DeLaney

Secretary

Michelle Ducharme

Attorney

April 3, 2013

NOTICE OF MEETING

TO: Senator Conrad Appel
Senator Norby Chabert
Senator Page Cortez
Senator A. G. Crowe
Senator Rick Gallot, Vice Chair
Senator John Smith
Senator Francis Thompson
Senator Mack "Bodi" White

FROM: Senator Danny Martiny, Chairman
Senate Commerce, Consumer Protection and International
Affairs Committee

The Senate Commerce, Consumer Protection and International Affairs Committee will meet as follows:

DATE: Tuesday, April 9, 2013

TIME: 9:00 a.m.

PLACE: Committee Room E

AGENDA: Oversight, under the Administrative Procedure Act, of the Department of Economic Development's proposed rule regarding the Musical and Theatrical Production Tax Credit Program. (LAC 61:I.1690-1699)

March 11, 2013

RE: Musical & Theatrical Production Tax Credit Program – Summary Report

To Whom It May Concern:

The Department of Economic Development hereby announces its plan to proceed with rule-making by finalizing the Musical & Theatrical Production Tax Credit Program Rules published as a Notice of Intent in the January 2013 Louisiana Register.

A public hearing was conducted on February 28, 2013, and the attached written comments were discussed. Attached is a summary of comments, the Department's responses, and a markup version of the revised NOI showing the proposed changes, which LED considers non-substantive changes. The Department has notified interested parties of its plan to move forward with finalization of the proposed rules.

Subject to legislative oversight by either the House or Senate Committees on Commerce, the House Committee on Ways and Means or the Senate Committee on Revenue and Fiscal Affairs, the Department intends to submit a Rule to the Office of the Louisiana Registrar for publication in the April 2013 edition.

As always, we welcome your consideration and I can be reached at ph#342-5406 with any questions.

Sincerely,

Stephanie Le Grange

Stephanie Le Grange
Staff Attorney

cc: Senate Committee on Commerce
Senate Committee on Revenue and Fiscal Affairs
House Committee on Commerce
Senate Committee on Ways and Means

Musical & Theatrical Production Tax Credit Program – Proposed Rules

Summary of Comments to proposed Rule Changes and responses of the Department of Economic Development.

Public Hearing Attendees:

Will French: LFEA & Film Production Capital
Christy Marino: LFEA & Tatman Group
Whitney La Nasa: Stonehenge Capital
Troy Villafarra: Crescent Growth Capital
Sherry Landry: Elkins PLC
Francine Graphia: Stonehenge Capital
Rodney Braxton: Southern Strategy

Comment 1: LFEA, Saenger Theatre & Carver Theatre

LED's proposal to cap soft costs such as finance and developer fees exceeds departmental authority.

Response:

LED has found that "soft cost" expenditures are an area of possible abuse warranting heightened scrutiny and the purpose of this language was to clarify LED's ability to only issue credits on qualifying expenditures *directly related to* state certified productions. However LED is sympathetic to industry comments on the language as drafted and has therefore deleted "Soft costs such as finance fees, developer fees and management fees may be capped as deemed appropriate by LED" and added "In qualifying submitted expenditures as production-related costs or capital costs related to an infrastructure facility, LED may determine whether such expenditures represent legitimate expenditures for the actual cost of related goods or services, having economic substance and a business purpose related to the certified production or facility, and not constructive dividends, self-dealing, inflated prices or similar transactions entered into for the purpose of inflating the amount of tax credits earned rather than for the benefit of the production or facility."

Comment 2: LFEA

LED's proposal requiring related party transactions to be supported by historical contracts from prior transactions exceeds departmental authority.

Response:

LED has found that "related party transaction" (RPT's) expenditures are an area of possible abuse warranting heightened scrutiny and the purpose of this language was to clarify LED's ability to only issue credits on qualifying expenditures *directly related to* state certified productions. However, LED is sympathetic to industry comments on the language as drafted and has therefore revised the language to clarify that such documents *may be* offered as evidence to support transactions, but will not be required.

Comment 3: LFEA

LED's proposal to limit qualifying spend to in-state performance dates only exceeds departmental authority.

Response:

LED believes that the statutory intent of this program is only to incentivize performances occurring in Louisiana and that any proposal to qualify expenditures for activity occurring *outside* of Louisiana are contrary to legislative intent and will make no change.

Comment 4: LFEA

LED's proposal to cap artist compensation fees for rehearsals exceeds departmental authority.

Response:

LED has found that rehearsal days are typically uncompensated and therefore the purpose of this language was to clarify LED's ability to only issue credits on qualifying expenditures *directly related to* state certified productions. However, LED is sympathetic to industry comments on the language as drafted and has therefore revised the language to clarify that this limitation *may, but need not*, apply to rehearsals, depending on supporting evidence presented.

Comment 5: LFEA, Saenger Theatre, Carver Theatre & Solomon Group Design Studio

LED's proposal to require a filing deadline of August 1, 2013, while the statute allows for certification until January 1, 2014, puts an undue burden on infrastructure project applicants and may result in financial jeopardy and the inability to complete projects.

Response:

LED is sympathetic to this argument, however, January 1, 2014 is the statutory deadline for issuance of tax credits under this program and LED must be given reasonable time to conduct site inspections of completed projects, review and verify qualifying expenditures before issuing tax credits. However, LED is sympathetic to industry comments on the language as drafted and has therefore revised the language to establish August 1, 2013 as a recommended deadline for submission only.



Louisiana Film & Entertainment Association

Philip Mann
Music and Live Performance Director
Louisiana Economic Development
P.O. Box 94185
Baton Rouge, LA 70804-9185

February 25, 2013

Mr. Mann,

Louisiana Film & Entertainment Association (LFEA), by resolution duly adopted by its Board of Directors on February 21, 2013 hereby formally objects to the amendments to the Rules relative to the Musical and Theatrical Production Income Tax Credit Program (LAC 61:I.1690-1699) described in that certain Notice of Intent dated January 20, 2013 on the following grounds, among others:

The proposed changes are contrary to the law and exceed departmental authority in several respects, including but not limited to the following:

- a. They permit the Department of Economic Development to institute caps on certain types of qualifying expenditures that are not capped as a matter of law.
- b. They require that certain transactions be supported by historical contracts from prior transactions which may not be available, and in such cases the qualifying nature of the transactions should not necessarily be jeopardized.
- c. They redefine the manner in which national concert tours may qualify for earning tax credits, namely by limiting qualifying spend to in-state performance dates, which limitation does not exist in the current law.
- d. They seek to cap artist compensation expenses related to rehearsals within Louisiana using an arbitrary figure of 20% of base investment, which limitation does not exist in the current law.
- e. They seek to impose a deadline on the filing of audits relative to infrastructure projects of August 1, 2013, while the statute allows for certification through January 1, 2014, and several projects would not have time to comply on such short notice

In addition, we are soliciting further feedback from our membership and may have additional comments and/or objections once that process is complete.

Sincerely,

Will French
President
Louisiana Film and Entertainment Association

LFEA is a professional trade association created to grow the film and entertainment industries in Louisiana. The association works to bring together the individuals working in the film and entertainment industries with businesses invested in Louisiana.

P.O. Box 82531, Baton Rouge, LA 70884 ■ 4707 Bluebonnet Blvd., STE B, Baton Rouge, LA 70809
Phone: 225.767.7640 ■ Fax: 225.767.7648

February 26, 2013

Mr. Philip Mann
Director, Live Performance and Music Industry Development
Louisiana Department of Economic Development

VIA EMAIL: philip.mann@la.gov

RE: Written Comments to Proposed Rules for Musical Theatrical Production Income Tax Credit, as Published in Louisiana Register, Vol. 39, No. 01 on January 20, 2013 (the "Proposed Rules").

Dear Mr. Mann,

On behalf of the undersigned (the "Taxpayers"), we respectfully submit the following comments to the Proposed Rules for LED's consideration":

- §1692(B). Infrastructure Expenditures—expenditures directly related to the state certified infrastructure project, shall include but not be limited to: land and acquisition costs, construction costs, design fees, furniture, fixtures, equipment purchased subject to a sale agreement or capital lease. Infrastructure expenditures shall not include indirect costs such as general administrative costs, insurance or any costs related to the transfer or allocation of tax credits. Soft costs such as finance fees, developer fees and management fees may be capped as deemed appropriate by LED.

With respect to the underscored language, Taxpayers respectfully suggest that permitting LED to cap such fees "as deemed appropriate" sets an unconstitutionally vague standard. Moreover, where (i) Taxpayers have already submitted budgets to LED that included the estimated amounts of such fees in connection with their application to LED for infrastructure tax credits and (ii) LED has issued an initial certification letter to such

Taxpayers based upon the submitted budgets, Taxpayers respectfully suggest that LED should not be permitted to effect any post-initial certification downward adjustments on the eligibility of any portion of such fees for infrastructure tax credits. As LED is aware, the financial underwriting of the live performance infrastructure has been very challenging in the current economic climate. Investors and lenders have relied, in good faith, on LED's initial certification of such projects and their underlying budgets, which detail anticipated tax credit eligible expenditures, in determining whether to invest or loan funds to a project. Taxpayers suggest that enabling post-initial certification rule changes after such investments and loans have been made in reliance thereupon would have a chilling effect on future investments and loans into projects utilizing state-based financial incentives and, more important, would place the projects that have already closed in reliance thereupon in financial jeopardy. Accordingly, Taxpayers respectfully suggest that the underscored language be deleted or, alternatively, be amended to add the following language: "provided, however, in no event shall LED reduce the eligible amount of any such fee below the amount previously disclosed in any budget for which LED subsequently issued an initial certification letter to Taxpayers without making any such downward adjustments."

- §1693(D)(1)(b)(ii) Related Party Transactions. If an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit.

With respect to the underscored language, Taxpayers respectfully note that La. Rev. Stat. §47:6034, the statute authorizing the musical and theatrical production infrastructure tax credit, does not in any way restrict or prohibit related party transactions. Accordingly, where (i) Taxpayers have already submitted budgets to LED that disclosed such related party transactions in connection with their application to LED for infrastructure tax credits and (ii) LED has issued an initial certification letter to such Taxpayers based upon the submitted budgets, Taxpayers respectfully suggest that LED should not be permitted to effect any post-initial certification downward adjustments on the eligibility of any portion of such related party transactions for infrastructure tax credits. As LED is aware, the financial underwriting of the live performance infrastructure has been very challenging in the current economic climate. Investors and lenders have relied, in good faith, on LED's initial certification of such projects and their underlying budgets, which detail anticipated tax credit eligible expenditures, in determining whether to invest or loan funds to a project.

Taxpayers suggest that enabling post-initial certification rule changes after such investments and loans have been made in reliance thereupon would have a chilling effect on future investments and loans into projects utilizing state-based financial incentives and, more important, would place the projects that have already closed in reliance thereupon in financial jeopardy. Accordingly, Taxpayers respectfully suggest that the underscored language be deleted or, alternatively, be amended to add the following language: "provided, however, in no event shall LED reduce the eligible amount of any such related party transactions below the amount previously disclosed in any budget for which LED subsequently issued an initial certification letter to Taxpayers without making any such downward adjustments."

- §1697(E)(2). In order to allow LED staff time to verify project completion requirements and validate qualifying expenditures, state-certified infrastructure project applicants shall submit any requests for final certification of tax credits with required cost report, to LED no later than August 1, 2013.

With respect to the underscored language, Taxpayers respectfully note that La. Rev. Stat. §47:6034, the statute authorizing the musical and theatrical production infrastructure tax credit, does not in any way accelerate the time frame upon which Taxpayers must submit requests for final certification of tax credits with the required cost report in advance of the January 1, 2014 program sunset. Accordingly, Taxpayers have undertaken such infrastructure projects in anticipation of having all of calendar year 2013 in which to incur eligible expenditures. As LED is aware, the financial underwriting of the live performance infrastructure has been very challenging in the current economic climate. Investors and lenders have relied, in good faith, on LED's initial certification of such projects and their underlying budgets, which detail not only anticipated tax credit eligible expenditures but also anticipated construction schedules, in determining whether to invest or loan funds to a project. Taxpayers suggest that enabling post-initial certification rule changes after such investments and loans have been made in reliance thereupon would have a chilling effect on future investments and loans into projects utilizing state-based financial incentives and, more important, would place the projects that have already closed in reliance thereupon in financial jeopardy. Accordingly, Taxpayers respectfully suggest that the underscored language be amended in its entirety to read as follows: "In order to allow LED staff time to verify project completion requirements and validate qualifying expenditures, state-certified infrastructure project

applicants shall submit (i) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred prior to June 30, 2013, to LED no later than August 1, 2013, (ii) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred from July 1, 2013 to September 30, 2013 LED no later than November 1, 2013 and (iii) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred from October 1, 2013 to November 30, 2013 LED no later than December 15, 2013.

With kind regards,

A handwritten signature in dark ink, appearing to read "David M. Anderson", with a stylized flourish extending to the right.

David Anderson

On behalf of the Saenger Theatre

Eugene G. Oppman

On behalf of the Carver Theater

applicants shall submit (i) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred prior to June 30, 2013, to LED no later than August 1, 2013, (ii) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred from July 1, 2013 to September 30, 2013 LED no later than November 1, 2013 and (iii) any requests for final certification of tax credits with required cost report for any eligible expenditures incurred from October 1, 2013 to November 30, 2013 LED no later than December 15, 2013.

With kind regards,

David Anderson
On behalf of the Saenger Theatre



Eugene G. Oppman
On behalf of the Carver Theater

February 27, 2013

Philip Mann

Director, Live Performance and Music Industry Development

Louisiana Department of Economic Development

VIA EMAIL: philip.mann@la.gov

RE: Proposed rule changes for the Music & Theatrical Production Tax Credit Program

Good Afternoon, Philip, Stephanie and Chris:

First, I want to express my appreciation for the support LED has provided through the Solomon Group infrastructure project. We are working to address your most recent comments, and we appreciate your patience as we just completed a busy month wrapping construction at the Civic Theatre. I do hope that you will tour the venue soon, if you have not already.

The intent of my email is to make you aware of my concerns regarding the proposed rule changes for the Music & Theatrical Production Tax Credit Program as published in the January 2013 issue of the Louisiana Register. I believe that the proposal puts an undue burden on the Design Studio portion of the Solomon Group infrastructure project, as completing construction on the project and providing an audited expense report by August 1, 2013, may result in the inability to complete the project.

I look forward to our continued relationship with LED. Please consider me always available to assist the development of the Live Performance Industry here in Louisiana.

Sincerely,

Gary Solomon Jr.

**NOTICE OF INTENT
RULE**

Department of Economic Development
Office of Entertainment Industry Development

**Musical and Theatrical Production Income Tax Credit Program
(LAC LAC 61.I.1690-1699)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development has initiated rulemaking procedures to hereby make amendments to the Rules for the Musical and Theatrical Production Income Tax Credit Program to bring the rules into compliance with current statutory provisions and administrative practices.

Title 61
REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs
Subchapter E. Musical and Theatrical Production Income Tax Credit Program

§1692. Definitions

A-B. ...

Base Investment—actual investment made and expended in this state by a state-certified musical or theatrical production:

- a. as production-related costs directly related to in state production; or
- b. as capital costs of a state-certified musical or theatrical facility infrastructure project.

Expenditure—actual payment of cash or cash equivalent, paid by or on behalf of a state certified production or state certified infrastructure project, exchanged for goods or services, as evidenced by an invoice, receipt or other such document. Cash or cash equivalent transactions may include but not be limited to: commercial or bank financed loans, actual physical transfer of coins and banknotes, other forms of transmission that will turn into cash very quickly, including written checks, credit cards, bank debit cards, and bank wire transfers. However, the receipt of a promissory note, the creation of an account receivable, or the sending of a customer invoice are not, by themselves, evidence of an expenditure. Owner financed transactions will only qualify as an expenditure when actual cash or cash equivalent payments are made.

Infrastructure expenditures—expenditures directly related to the state certified infrastructure project, shall include but not be limited to: land and acquisition costs, constructions costs, design fees, furniture, fixtures, equipment purchased subject to a sale agreement or capital lease. Infrastructure expenditures shall not include indirect costs such as general administrative costs, insurance, or any costs related to the transfer or allocation of tax credits. Soft costs such as finance fees, developer fees and management fees may be capped as deemed appropriate by LED. In qualifying submitted expenditures as production-related costs or capital costs related to an infrastructure facility, LED may determine whether such expenditures represent legitimate expenditures for the actual cost of related goods or services, having economic substance and a business purpose related to the certified production or facility, and not

constructive dividends, self-dealing, inflated prices or similar transactions entered into for the purpose of inflating the amount of tax credits earned rather than for the benefit of the production or facility.

Multi-purpose facility—a building or building complex that is capable of more than one use. Examples may include, but not be limited to; a building complex containing a theatre and a restaurant; one building that can be configured in a variety of ways, such as the ability to host either a live performance stage production or a live sporting event.

Originate—shall include, but not be limited to, state-certified musical or theatrical productions which are:

- a. pre-Broadway engagement or remounts;
- b. tour or resident production remounts;
- b. resident or regional productions;
- c. national touring companies producing their first public performance in Louisiana; or
- d. concert tours producing their first public performance in Louisiana.

Payroll—all salary, wages, and other compensation, ~~including related benefits, for services performed in Louisiana~~ fringe benefits taxed, sourced or apportioned to Louisiana, and federal payroll taxes such as the employer's portion of FICA/FUTA and workers' compensation insurance costs to the extent purchased from a source within the state. Fringe Benefits including health care costs, 401K contributions, dental plans, and life insurance will be considered if these costs are paid by the employer and costs are apportioned to services performed in Louisiana on a certified project.

Production Expenditures—a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, or operating expenditures in this state for a state-certified production performed in Louisiana as follows. See §1694 for detailed illustrative examples of eligible and ineligible expenditures commonly associated with musical or theatrical production projects.

a. ~~Eligible expenditures shall include, but not be limited to set construction and operation, special and visual effects, costumes, wardrobes, make-up accessories, costs associated with sound, lighting, staging, payroll and other related costs.~~

b. ~~Ineligible expenditures shall include, but not be limited to, any expenditures later reimbursed by a third party, any costs related to the transfer of tax credits, and any other indirect costs.~~

Series of productions — a new musical or theatrical production with multiple Louisiana performances in a 12 month period. Simply rebranding or renaming a series, without substantive creative changes, will make a series ineligible for recertification in subsequent years.

State-Certified Musical or Theatrical Production—a concert, musical or theatrical production, or a series of productions occurring over the course of a 12-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before a paying audience within Louisiana, or which have their United States debut within Louisiana, and the production expenditures, expenditures for the payroll of residents, transportation expenditures, and expenditures for employing college and vocational-technical students related to such production or productions, that are certified, verified, and approved as provided for in this Section. Non-qualifying projects include, but are not limited to non-touring music and cultural festivals, industry seminars, trade shows, and any production activity taking place outside the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2173 (October 2009), repromulgated LR 36:2237 (October 2010).

§1693. Certification Procedures

A. – C. ...

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification and initial certification, an applicant may obtain final certification as follows.

a. A cost report shall be submitted by the applicant, certified by an independent certified public accountant and complying with the minimum standards as required by R.S. 47:6034.

b. The cost report may be subject to additional audit at the applicant's expense. The department shall select the auditor and determine the audit standards.

i. Incorrect reporting. If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit.

ii. Related party transactions. If an audit contains related party transactions in excess of 20% of the total expenditures reported in the submitted audit there may be cause for an additional audit.

iii. Reimbursement of Audit Costs. The Department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the Department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

c. Additional information may be requested in order to make a determination of eligibility.

d. The department shall review the cost report and supporting information, and following verification of qualifying expenditures, shall issue a final tax credit certification letter.

e. Multiple requests for final certification may be submitted.

i. Each submission must be accompanied by an audited cost report indicating expenditures.

ii. Two submissions shall be certified at no additional fee by the department.

iii. Additional charges may apply for three or more certification requests.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009), repromulgated LR 36:2238 (October 2010).

§1694. Illustrative Examples of Production Expenses.

A. Eligible

1. salary expenses directly relating to the development of a state certified production, with position titles including but not limited to: stagehands, crew, electricians. When determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. artist compensation directly relating to performance days in Louisiana;

3. set construction and operation expenses;

4. special and visual effects expenses;

5. costumes, wardrobes and make-up accessories expenses;

6. costs associated with sound, lighting and staging;

B. Ineligible

1. salary expenses *not* directly related to the development of a state certified production, including but not limited to staff in the following departments: IT, clerical, human resources, janitorial service. When determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. state and local taxes;

3. any expenditures related to out of state production;

4. any costs later reimbursed by a third party;

5. any costs related to the transfer of tax credits;

C. Limitations for certain transactions

1. artist compensation for non-performance days, such as rehearsals, shall be limited to no more than 20% of total base investment for performances in Louisiana;
2. ~~soft costs such as finance fees and producer fees may be capped as deemed appropriate by LED.~~
3. where goods are provided by a related party, qualifying expenditures are limited to *fair market value*, ~~as~~ which may be established through the related party's historic dealings with unrelated parties, or actual transactions between other unrelated parties, for substantially similar goods. The comparable transactions must be substantially similar, considering the type of goods, the geographic market, and other pertinent variables. For example: The production company has recently acquired the same type of goods in Louisiana at the same price from an unrelated third party. If *FMV* cannot be established, qualifying expenditures will be limited to the *internal cost recovery rate*, consisting of actual documented acquisition cost, plus ongoing maintenance and upgrade cost, divided by anticipated utilization over the real useful life.
4. where services are provided by a related party, qualifying expenditures are limited to the *actual compensation* paid by the related party to its employee actually performing the service (including employer-paid benefits), allocated to the production on an hourly basis. Related party transactions must be supported by an audit and documentation as requested by LED, which may include (but is not limited to) third-party contracts, notarized affidavits, tax records, and cancelled checks.
5. any expenses made *on behalf of* a state certified production, by an entity other than the applicant approved by LED and being claimed for tax credits, must be submitted with additional supporting documentation as requested by LED.

§1695. Additional Program Procedures—Production

- A. 1-2 ...
 - 3 a-b ...
 - c. For Limited State-Certified Musical or Theatrical Productions
 - i. For applications received on or before January 1, 2013, a tax credit may be granted for base investments made by non-profit community theaters for each of the 2009 and 2010 calendar years.
 - ii. If the total base investment is more than \$25,000 but less than \$300,000, a tax credit of 10 percent of the base investment applies.
 - iii. Applicants shall be limited to a maximum of two applications per year, for the 2009 and 2010 calendar years.
 - iv. The total amount of tax credits eligible to be issued shall not exceed \$250,000 for each of the calendar years 2009 and 2010.

4 ...
B-D ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009), repromulgated LR 36:2239 (October 2010).

A. Qualification of the Infrastructure Project

- 1-2 ...
 3. The department shall determine whether a facility "supports" or is a "necessary component" of a state certified infrastructure project. Examples of qualifying facilities would be a parking garage, gift shop or costume storage. Examples of non-qualifying facilities would be restaurants, bars, hotels, golf courses and shopping centers.
 4. The department shall determine whether a facility is a "multi-purpose" infrastructure project qualifies, taking into consideration relevant factors such as: the frequency of musical or theatrical productions; the configurations and permanence of stage and seating; the percentage of square footage allocated to live performance versus total building square footage; the booking agent or management company's professional experience; applicant's ability to document ticket sales through an on-line event ticketing site or on-site box office and any other factors deemed relevant by LED. ~~under the terms of R.S. 47:6034.~~
 - a. Upon a determination of qualification as a multi-purpose infrastructure project, the applicant ~~must provide contractual assurances that:~~
 - ~~i. the facility will be used to produce or support musical or theatrical productions, for the useful life of the facility;~~

~~ii. the useful life of the facility shall be determined by the department and may be subject to the following additional restrictions, which shall be set forth in the initial certification:~~

i. Only expenditures directly related to a live musical or theatrical performance in Louisiana are eligible for tax credits and any expenditures unrelated to such productions shall be excluded. In calculating the estimated amount of qualifying versus non-qualifying expenditures, LED will select the methodology it deems most appropriate under the circumstances.

ii. Tax credits may be subject to a structured release over the course of two to five years.

iii. State certification of a multi-purpose facility project is conditioned upon continued primary use for live performance productions for a period of at least two calendar years from date of project completion.

(1) Evidence of compliance. Applicant shall provide annual reports to LED for two calendar years, verifying continued use primarily as a live performance production facility, which may include but not be limited to financial statements reflecting total ticket sales, food and beverage revenue, alcohol sales, and a detailed report of live performance productions held.

(2) Default. In the event applicant fails to comply with the continued use requirements during any of the specified years, applicant shall forfeit all unreleased tax credits (for the year in which it failed to comply and all future years).

iv. For the purposes of this section, entertainment typically performed in bars subject to a "cover charge" and non-traditional entertainment such as balloon artists, quiz shows and casting calls will not be considered a qualifying live performance production.

B. Duration of Tax Credit

1. Tax credits may be granted under R.S. 47:6034 until January 1, 2014.

C. Amount of and Limitations upon Tax Credit

1. If the total base investment is more than \$100,000, but less than \$300,000, a tax credit of 10 percent applies.

2. If the total base investment is more than \$300,000, but less than \$1,000,000, a tax credit of 20 percent applies.

3. If the total base investment is more than \$1,000,000, a tax credit of 25 percent applies.

4. No more than \$10,000,000 may be granted per state certified infrastructure project.

5. No more than \$60,000,000 may be granted, per year, for all state certified infrastructure projects.

a. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

b. Fifty percent of the tax credits annually granted for infrastructure projects shall be reserved for projects located outside of Jefferson and Orleans parishes, provided that the availability of tax credits for infrastructure projects in Jefferson and Orleans parishes shall not be conditioned upon the granting of infrastructure tax credits for projects outside of those parishes.

D. ...

E. Infrastructure program sunset limitations

1. The final day that LED may grant tax credits under the infrastructure program is January 1, 2014.

2. In order to allow LED staff sufficient time prior to that date to verify project completion requirements and validate qualifying expenditures, LED recommends that state-certified infrastructure project applicants ~~shall~~ submit any requests for final certification of tax credits, with required cost report, to LED no later than August 1, 2013. LED shall make best efforts to timely process any requests received after this date.

3. In the event that either the program caps or geographic caps listed above are met for the calendar year 2013, LED shall publish notice on its website www.LouisianaEntertainment.gov and send out written notice to infrastructure applicants, advising them of cap fulfillment. Whereas excess expenditures are treated as having been applied on the first day of the subsequent year, and tax credits may not be awarded for 2014 expenditures, any 2013 excess expenditures will be considered non-qualifying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2177 (October 2009), repromulgated LR 36:2240 (October 2010).

Family Impact Statement

Family Impact Statement: It is anticipated that the proposed Rule amendment will have no significant effect on the: (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

It is anticipated that the proposed rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons should submit written comments on the proposed Rules to Philip Mann through the close of business on February 27, 2013 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or via email to philip.mann@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 10am on February 28, 2013 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Jason El Koubi, Assistant Secretary

Louisiana Economic Development